

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Docket No. FAA-2000-7360; SFAR 87

RIN No. 2120-98

Prohibition Against Certain Flights Within the Territory and Airspace of Ethiopia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action prohibits certain flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA unless that person is engaged in the operation of a U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is deemed necessary to prevent an undue hazard to persons and aircraft engaged in flight operations in the referenced airspace because of the threat posed by the outbreak of hostilities between Ethiopia and Eritrea.

DATES: This action is effective May 12, 2000 and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: For a copy of this amendment contact the Office of Rulemaking at (202) 267-9680. For technical questions, contact David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 267-8166.

SUPPLEMENTARY INFORMATION:

Availability of this action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321-3339) or the Government Printing Office's (GPO) electronic bulletin board service ((202) 512-1661). Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Ave, SW, Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the notice number or docket number of this action.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA

official. Internet users can find additional information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.htm> and send electronic inquiries to the following Internet address: 9_AWA_SBREFA@faa.gov.

Background

The FAA is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and operators throughout the world. Section 40101(d)(1) of Title 49, United States Code (U.S.C.), declares, as a matter of policy, that the regulation of air commerce to promote safety is in the public interest. Section 44701(a) of Title 49, U.S.C., provides the FAA with broad authority to carry out this policy by prescribing regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce.

Since the failure of April 30, 2000, peace talks sponsored by the Organization of African Unity (OAU) in Algiers, a border dispute between Ethiopia and Eritrea that began in May 1998 has escalated again to the point where open hostilities have begun. Armed forces of both countries, which include modern surface-to-air missile systems and interceptor aircraft capable of engaging aircraft at cruising altitudes, are now engaged in hostilities near their common border. Since war has broken out, civil aircraft operating in the region could be threatened.

Even in the event of a cease-fire, the heightened state of readiness maintained by the military forces of Ethiopia poses an imminent threat to civil aircraft operations in the area. Prior to the most recent mobilization, Ethiopian air defense forces had maintained an already high state of readiness during the cease-fire that threatened civil aircraft

operating in the northern portion of Ethiopia. The August 29, 1999, downing by Ethiopian military forces of a U.S.-registered Learjet operating in the area is evidence of the seriousness of the threat. Ethiopia has issued temporary Notices to Airmen (NOTAM) closing certain routes in the Addis Ababa Flight Information Region. However, neither the Ethiopian CAA nor the Ethiopian military has issued formal warnings by NOTAM, in the Ethiopian Aeronautical Information Publication (AIP), or in some other forum, of the potentially catastrophic consequences of flying on routes temporarily removed from service. Further, Addis Ababa has rejected the FAA's recommendation to establish a true "no fly" or "danger" zone. Also, the FAA cannot assure that an adequate level of coordination exists between civil air traffic authorities and air defense commanders for civil aircraft overflight, including military rules of engagement, in the event an aircraft strays from its assigned route of flight. Any lack of coordination could put aircraft operating over northern Ethiopia at risk of being misidentified by military forces as a threat. Finally, there is no assurance that Ethiopia will follow international standards and recommended practices for the interception and identification of unidentified aircraft in its airspace.

Given the circumstances noted above, the FAA has determined that the safe overflight of the territory of Ethiopia north of 12 degrees north latitude cannot be guaranteed.

Prohibition Against Certain Flights Within the Territory and Airspace of Ethiopia

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that action by the FAA is necessary to prevent the injury to U.S. operators or the loss of certain U.S.-registered aircraft and airmen conducting flights in portions of the territory and airspace of Ethiopia. I find that the continuing lack of adequate warnings to civil operators, the heightened state of military readiness by both Ethiopia and Eritrea, the renewal of hostilities, and the absence of proper civil aircraft identification procedures present an immediate hazard to civil aircraft operations in the referenced airspace.

Accordingly, I am prohibiting all flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA unless that person is engaged in the operation of a U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action will prevent an undue hazard to aircraft and would protect persons and property on board those aircraft. SFAR 87 will remain in effect until further notice.

Because the circumstances described herein warrant immediate action by the FAA to maintain the safety of flight by the aforementioned persons within portions of the territory and airspace of Ethiopia, I find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective upon issuance. I also

find that this action is fully consistent with the obligations under section 40105 of Title 49, United States Code, to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

International Trade Impact Assessment

There are currently no U.S. carriers that would be expected to conduct scheduled or codeshare operations in the airspace of Ethiopia north of 12 degrees north latitude. This amendment would not eliminate existing or create additional barriers to the sale of foreign aviation products in the United States or to the sale of U.S. aviation products and services in foreign countries.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(d) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is not a significant rule within the meaning of either the Executive Order or DOT's policies and procedures. Accordingly, no regulatory analysis or evaluation accompanies this amendment. The FAA certifies that this rule will not have a substantial impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. It also will have no impact on international trade and creates no unfunded mandate on any entity.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Ethiopia.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends
14 CFR Part 91 as follows:

PART 91 — GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 USC 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531; Articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. Special Federal Aviation Regulation (SFAR) No. 87 added to read as follows:

Special Federal Aviation Regulation No. 87 - Prohibition Against Certain Flights Within the Territory and Airspace of Ethiopia

1. Applicability. This Special Federal Aviation Regulation (SFAR) No. 87 applies to all U.S. air carriers or commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA unless that person is engaged in the operation of a U.S.-registered aircraft for a foreign air carrier, and all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. Flight prohibition. Except as provided in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude.

3. Permitted operations. This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Ethiopia where such operations are authorized either by exemption issued by the Administrator or by an authorization issued by another agency of the United States Government with the approval of the FAA.

4. Emergency situations. In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 C.F.R. 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons therefor.

5. Expiration. This Special Federal Aviation Regulation shall remain in effect until further notice.

Issued in Washington, DC on May 12, 2000.

Jane F. Garvey
Administrator